

(2011) 12 MAD CK 0151

In the Madras High Court

Case No : Contempt Petition No. 1140 of 2011

New Bridge Holdings B.V.

APPELLANT

Vs

TTK-LIG Limited and Others

RESPONDENT

Date of Decision : 16-12-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 2(3), 115
Companies Act, 1956 — Section 10E, 10E(1A), 10E(4C), 10E(6), 10F
Company Law Board Regulations, 1991 — Regulation 44, 47
Constitution of India, 1950 — Article 215, 227, 235
Contempt of Courts Act, 1971 — Section 10, 12
Criminal Procedure Code, 1973 (CrPC) — Section 195, 195(1), 476
Land Revenue Act — Section 40
Penal Code, 1860 (IPC) — Section 193, 196, 228

Citation : (2012) 109 CLA 34 : (2012) 3 CTC 524

Hon'ble Judges : K.K. Sasidharan, J;D. Murugesan, J

Bench : Division Bench

Advocate : Abhishek Manu Singhvi, for Mr. R. Jawaharlal and Mr. R. Saravanakumar, for the Appellant; A.L. Somayaji for Mr. R. Sankaranarayanan for R1 and R9, Mr. S. Rajesh for R6, Mr. H. Karthick Seshadri for M/s Iyer and Thomas for R2 to R5, R7 and R8, for the Respondent

Final Decision : Dismissed

Judgement

D. Murugesan, J.—The petitioner, New Bridge Holdings B.V., through its Authorised Signatory seeks for a direction to punish the respondents for their act of disobeying and defying the order dated 1.6.2011 made in C.A.No.113 of 2011 in C.P.No.41 of 2011 on the file of Company Law Board, Chennai Bench, Chennai.

2. In support of the petition, the petitioner has averred as follows. The first respondent, M/s TTK-LIG Limited is a joint venture company incorporated in 1963 with the petitioner/its parent company. The petitioner and TTK group hold 49.87 per cent shares each and the balance percentage is held by 40 individuals. The first respondent, inter alia, manufactures contraceptives including condoms under the trademarks "Durex" and "Kohinoor". The group/parent company of the

petitioner had provided the technology, machinery, processes, etc., in 1963 and continue to provide the same to the first respondent. The group company had also permitted the use of its world renowned trademarks "Durex" and "Kohinoor" to the first respondent and in addition 80 per cent of the turnover and profit of the first respondent comes from exports to the petitioner and its group companies.

3. Both the petitioner and the first respondent are under the joint and equal management right from the year 1963 and their inter-se rights are governed by the Articles of Association and the agreements executed between them. The ninth respondent by name T.R.Venkatesh is the Managing Director of the first respondent company. Though he is supposed to be independent, he started acting in collusion with TTK group. In the meeting of the Board of Directors of the first respondent company held on 2.5.2011, resolutions were passed reducing the petitioner to minority from the position of equal and joint management of joint venture company. A further resolution was passed to suspend the export, unless the group companies of the petitioner agree for the sale price of total costs plus profit of 50 per cent instead of the profit of 15 per cent and agree to purchase 80 crore pieces per year for five years. It was also resolved to appoint a distributor in India from amongst the TTK group companies for five years. According to the petitioner, all the resolutions were contrary to the Articles of Association of joint venture company and therefore ultra vires and illegal. Though the condition in regard to the sale price and increase of profit from 15 per cent to 50 per cent was onerous, the foreign buyer agreed under duress and coercion only in order to get the supplies. The foreign buyer agreed to the terms only on condition that the first respondent company should resume the exports by 10.5.2011. As the first respondent did not resume the export and forced the petitioner to give its consent to the resolutions as a pre-condition for resumption of export, the petitioner had to withdraw its offer.

4. On the above factual background, the petitioner filed a company petition before the Company Law Board for oppression of its rights and mismanagement of the first respondent company. The petitioner also prayed for stay of the resolutions passed by the Board of Directors of the company in its meeting held on 2.5.2011 and to restrain the respondents from implementing the same. The Company Law Board took up the petition for hearing on 20.5.2011 and, after hearing both sides and perusing the records, passed the following interim order:

Till the matter is heard I think it is just and proper to direct the respondents to restore the supply of goods as per the terms detailed in the letter dated 06.05.2011 i.e., at 50%, as against 15%. The above order is made without prejudice to the contentions on both sides. The supply made by the respondents on the basis of this order shall be subject to the final outcome of the CP.

5. According to the petitioner, in spite of the above directions of the Company Law Board, the respondents deliberately and wilfully disobeyed the order. The Managing Director of the first respondent company wrote to the foreign buyer

that unless an agreement for a term of five years with an assured order for 80 crore pieces per year with 50 per cent profit to the company is executed, exports would not be resumed. Under the circumstances, the petitioner filed C.A.No.113 of 2011 before the Company Law Board seeking initiation of proceedings for disobedience. By order dated 27.5.2011, the Company Law Board adjourned the matter to 1.6.2011 for hearing on the implementation of the order dated 20.5.2011. The said adjournment was granted on the request of the respondents.

6. The Company Law Board took up the matter in C.A.No.113 of 2011 on 1.6.2011 and passed the following order:

The copy of the affidavit has been served on the respondents. The affidavit is taken on record. The draft agreement has been made available by the respondents for my perusal, as per which 800 million units per annum or 50% global sales of Durex whichever is lower will be supplied for a term of five years. In my view, till a formal agreement is drawn up, it will be in the interest of the company and the joint venture partners to limit the supply for a period of three months from June 2011 to August 2011 at the price stipulated in my order dated 20.05.2011 and on the undertaking given in the affidavit by the petitioner, LIG, SSL and its affiliates. In partial modification of my order dated 25.05.2011, the respondents are hereby directed to resume the supply as per the terms undertaken in the affidavit filed by the petitioner and its affiliates.

The respondent company has made clear that the mutual trust and confidence that was prevalent in the past decades between the parties have been completely destroyed and expressed their willingness to exit from the company on a fair price. The petitioner had undertaken to respond to the offer made on behalf of respondents (TTK Group) on June 22, 2011. I therefore direct both sides to come with proposals in this regard. CP adjourned to 22.06.2011 at 10.30 AM.

The said order came to be passed on the following undertaking given by the petitioner:

2.1. The petitioner, LIG, SSL and its affiliates had earlier placed Purchase Orders on the JV Company. They would replace those Purchase Orders on the JV Company within 24 hours; at a price stipulated by this Hon"ble Board in its order dated 20.05.2011. The JV Company would commence supply within 48 hours and complete the same, in terms of previously existing arrangement.

2.2. Payments for the supplies so made, would be mad to the JV Company, within 15 days, from the date of receipt of delivery of individual consignments of the ordered goods.

2.3. The petitioner, LIG, SSL and its affiliates would place Purchase Orders for a total of 200 million pieces (condoms) or 50% of their collective global requirement, whichever is lower (which includes the Purchase Orders referred to in paragraph 2.1 above), over the next three months i.e.June, 2011 to August,

2011, at prices stipulated by this Hon''ble Board's Order dated 20.05.2011. The petitioner, LIG, SSL and its affiliates, would remain bound by the terms of the aforesaid undertaking.

7. After the above order, the respondents sent an e-mail of excuse for not complying with the order of Company Law Board and also forwarded a letter dated 13.6.2011 to the advocates of the foreign buyer stating that unless an agreement was executed with the first respondent company for a period of five years with an assured order of 80 crore pieces per year or 50 per cent of the foreign buyer's total requirement whichever is lower with the price at total cost plus 50 per cent profit, they would not resume supplies. On the above facts, the petitioner had approached this Court with the allegation of wilful disobedience and disregard to the order of Company Law Board by the respondents.

8. The respondents 1 to 9 have filed a common counter affidavit denying each and every averment of the petitioner. The contempt petition is opposed on the ground that the petitioner having obtained the order dated 1.6.2011, should have filed a petition to execute the said order and there was not even an attempt to do so. In fact, the petitioner had questioned the said order in Company Appeal No.11 of 2011 before this Court and having failed to obtain any interim order, has resorted to file the contempt petition. Secondly, the petitioner is not the beneficiary of any order of the Company Law Board and it has no locus standi on the ground that the beneficiary of the order would be only SSL, PLC and LRC products limited, the parent companies. It is the case of the respondents that the petitioner had suppressed an important fact that SSL and LRC had filed a claim before the High Court of Justice, Chancery Division, London and sought for the grant of mandatory injunction against the first respondent to effect supply of contraceptives based on the alleged contract and the said application was dismissed on 1.7.2011 and by a subsequent order dated 21.7.2011, the claim for grant of default judgment was also dismissed. The petitioner had allowed the said orders to stand and did not question the said orders any further. According to the respondents, the petitioner is only a proxy exposing the cause of SSL and LRC simultaneously in Company Law Board and before this Court. According to the respondents, in any event, the question of wilful disobedience of the order of the Company Law Board does not arise. When the company petition was heard on 20.5.2011, the Company Law Board did not grant interim order of stay of the resolutions passed by the first respondent company on 2.5.2011. In fact, the Company Law Board in its order found that it cannot go into any commercial compromise between the parties. It is also averred that alleging disobedience, the petitioner filed C.A.No.113 of 2011 before the Company Law Board under Regulations 44 and 47 of the Company Law Board Regulations read with Section 406 of the Companies Act. By order dated 7.7.2011, after referring to earlier orders, the Company Law Board had only permitted the first respondent to exit from the company on a fair value to be arrived at on the valuation of shares. Accordingly, the Company Law Board had appointed a valuer to value the shares of the company with a further direction that the first respondent can also opt to

purchase the petitioner's share. Having obtained such an order, it is not open for the petitioner to approach this Court again alleging disobedience. In any case, as the contempt petition has been filed against interim order, it is not maintainable.

9. We heard Dr.Abhishek Manu Singhvi, learned Senior Advocate for the petitioner, Mr.A.L.Somayaji, learned Senior Advocate for the respondents 1 & 9, Mr.S.Rajesh, learned Advocate for the respondent 6 and Mr.H.Karthick Seshadri, learned Advocate for the respondents 2 to 5, 7 & 8 elaborately.

10. We have carefully considered the rival contentions. Before we go into the contentious issues raised on merits, we are called upon to consider as to whether the contempt petition would lie before this Court alleging wilful disobedience of the order of the Company Law Board. The relevant provisions of the Contempt of Courts Act, Company Law Board Regulations and the Companies Act for consideration of the issue read thus:

S.10. Power of High Court to punish contempts of subordinate Courts.--Every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of Courts subordinate to it as it has and exercises in respect of contempts of itself:

Provided that no High Court shall take cognizance of a contempt alleged to have been committed in respect of a Court subordinate to it where such contempt is an offence punishable under the Indian Penal Code (45 of 1860).

R.47. Bench to be deemed to be a Court for certain purposes.--A Bench shall be deemed to be a Court or lawful authority for the purpose of prosecution or punishment of a person who wilfully disobeys any direction or order of such Bench.

S.634A. Enforcement of orders of Company Law Board.--Any order made by the Company Law Board may be enforced by that Board in the same manner as if it were a decree made by a Court in a suit pending therein, and it shall be lawful for that Board to send, in the case of its inability to execute such order, to the Court within the local limits of whose jurisdiction,-

(a) in the case of an order against a company, the registered office of the company is situated, or

(b) in the case of an order against any other person, the person concerned voluntarily resides, or carries on business or personally works for gain.[Provided that the provisions of this section shall not apply on and after the commencement of the Companies (Second Amendment) Act, 2002.]

11. Section 10 of the Contempt of Courts Act, 1971 confers a power on the High Court to punish contempts of subordinate Courts. By that provision, every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of Courts subordinate to it as it has and exercises in respect of contempts of itself.

The phrase "Courts subordinate to it" used in Section 10 is wide enough to include all Courts which are judicially subordinate to the High Court, even though they are not under its administrative control under Article 235 of the Constitution of India. The High Court has the power of superintendence under Article 227 over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction. In order to keep the subordinate Courts and the Tribunals over which the High Court exercises its jurisdiction, the power of superintendence is conferred on the High Court under Article 227 of the Constitution of India. The inherent power of the High Court to supervise the subordinate Courts and the Tribunals would also include its power to punish for contempt of the Tribunals, which is based on a correlative duty of the High Court, co-related to the power of superintendence which the High Court has over the Tribunals. The power of superintendence under Article 227 is not being administrative, but being judicial. It extends to punish for the contempt of the Tribunals. The question as to whether the High Court has jurisdiction to initiate proceedings under the Contempt of Courts Act with respect to the proceedings of the Assistant Collector pending before it for the correction of papers u/s 40 of the Land Revenue Act, came up for consideration before the Allahabad High Court. In the judgment in *Satdeo Pandey Vs. Baba Raghav Das*, the question was considered by a Division Bench and as there was a difference of opinion on the question, it was referred to a third Judge. Justice Wali Ullah, while considering the question, ultimately held that the Court of an Assistant Collector is a revenue Court and is subordinate to the High Court; consequently, it comes within the power possessed by the High Court to protect its subordinate Courts. While holding that the Revenue Court of an Assistant Collector is a Court subordinate to the High Court, one of the two Hon'ble Judges, namely, Justice Mushtaq Ahmed, placed reliance on the following two judgments. The first judgment was by Justice Cornelius made in AIR 1949 131 (Lahore) holding the law thus:

The High Court is also the superior Court within the province, charged with the duty of setting limits to the jurisdiction of all other judicial tribunals or Courts within the province, and this imports subordination to the latter tribunals qua the High Court. Further, if it can be shown that over "any part of its" jurisdiction, a tribunal is directly subordinate to the appellate or revisional authority of the High Court then it must be held to be subordinate to the High Court in the respects relevant for the application of S. 115, Civil P.C.

A Full Bench judgment of the Allahabad High Court Lucknow Bench reported in *H. C. D. Mathur, Secy. of the National Federation of Railway Vs. E.I. Rly. Administration*, was also quoted, where the Full Bench observed thus:

A very great difference exists between the Workmen's Compensation Act and the Payment of Wages Act, inasmuch as the former Act provides for an appeal "from certain orders" of the Commissioner appointed under the Act to the High Court, while the latter does not provide for any such appeal. Thus under the Workmen's Compensation Act, the Commissioner is a Court subordinate to the appellate

jurisdiction of the High Court and can well be held to be a Court subordinate to the High Court for the purposes of S. 115, Civil P.C.

The approach of the Court seems to be that in case a Tribunal or even a Revenue Court, while discharging its quasi-judicial function, would be considered to be a Court subordinate to the High Court. In that event the orders of the Tribunal/ Revenue Court are amenable to the appellate jurisdiction of the High Court.

11A. In *Jaintendra Kumar Aggarwal Vs. Lakshmi Kant Mukt.*, a Full Bench of the Delhi High Court, after examining the provisions of the statute, held that the Tribunal is a Court within the meaning of Section 195(1)(b) of the Criminal Procedure Code and a civil Court within the meaning of Section 476 (old) of the said Code. The issue was again considered by yet another Full Bench of Delhi High Court in *Sardari Lal Vs. Ram Rakha*, and the Full Bench has taken the same view. While considering the question as to whether a Revenue Board could be brought under the provisions of Section 10 and for that reason could it be considered to be a Court subordinate to the High Court, the Apex Court in the judgment in *S.K. Sarkar, Member, Board of Revenue, U.P., Lucknow Vs. Vinay Chandra Misra*, has observed that the Revenue Board is subject to the power of superintendence of the High Court under Article 227 and therefore it constitutes a Court. A careful study of the law would lead to the only conclusion that in order to constitute a Court in stricto sensu, the essential condition is that the Court should have, apart from having some of the trappings of judicial tribunal, power to give a decision or a definite judgment which has finality and authoritativeness which are essential test of judicial pronouncement. The High Court must apply the above test for determining what is a Court strictly so called within the connotation of the term used in the Contempt of Courts Act.

12. The question as to whether the Company Law Board could be considered to be a Board coming under the superintendence of the High Court, the following provisions are referable. The Company Law Board has been constituted by the Central Government by issuance of a notification in the Official Gazette in terms of Section 10E of the Companies Act. By virtue of the provisions of sub-section (1A) of Section 10E, the Company Law Board shall exercise and discharge such powers and functions as may be conferred on it under the Act or other law. Sub-section (4C) of Section 10E vests on the Company Law Board the powers vested in a Court under the CPC while trying a suit for discovery and inspection of documents or other material objects producible as evidence; enforcing the attendance of witnesses and requiring the deposit of their expenses; compelling the production of documents or other material objects producible as evidence and impounding the same; examining witnesses on oath; granting adjournments and reception of evidence on affidavits. Sub-section (4D) of Section 10E contemplates that every Bench shall be deemed to be a civil Court for the purposes of section 195 and every proceeding before the Bench shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code and for the purpose of section 196 of that Code. By that

provision, the Company Law Board shall be considered to be a Court and by virtue of the provisions of Section 10F, the decision or order of the Company Law Board is appealable to the High Court by a person aggrieved over such decision or order. The Company Law Board exercises the judicial power while dealing with the Company Application and its orders have the trappings of judicial pronouncement. The Company Law Board is thus a Court judicially subordinate to the High Court and the High Court has jurisdiction to enquire into the alleged contempt and if found to be true, has jurisdiction to punish the violators. (See the judgment of Andhra Pradesh High Court in N. Venkata Swamy Naidu Vs. Sri Surya Teja Constructions Pvt. Ltd. and Others,

13. It is alternatively argued on behalf of the respondents that in terms of Regulation 47 of the Company Law Board Regulations, 1991, the Bench of the Company Law Board shall be deemed to be a Court or lawful authority for the purpose of prosecution or punishment of a person who wilfully disobeys any direction or order of such Bench. It is further argued that in terms of Section 634A of the Companies Act, any order made by the Company Law Board may be enforced by that Board in the same manner as if it were a decree made by a Court in a suit pending therein and therefore when such power is conferred on the Company Law Board to prosecute and punish a person who wilfully disobeys any direction or order of such Bench, invocation of the provisions of Section 10 of the Contempt of Courts Act is unsustainable. Let us consider first the submission on Section 634A of the Companies Act. A close reading of the provisions of Section 634A of the Companies Act would show that the Company Law Board is vested with the power to enforce its order in the same manner as a decree made by a Court in a suit. The said provision was inserted by Act 46 of 1997, which came into force with effect from 24.12.97. By virtue of the proviso inserted by the Companies (Second Amendment) Act, 2002, the said provision shall not apply on and after the commencement of the said amendment Act. The amendment Act came into force with effect from 13.12.2002. Hence, the reliance placed by the respondents over the power of the Company Law Board to enforce its order in terms of Section 634A instead of filing a contempt petition is no more available and has to be rejected.

14. Let us now move on to the submission on Regulation 47. Normally, this Court would not entertain a contempt petition in the event a specific provision is conferred on the Company Law Board itself to proceed for disobedience of its order. It is true that by virtue of the Company Law Board Regulations, which are framed under sub-section (6) of Section 10E of the Companies Act, a power is vested on the Board to prosecute and punish a person who wilfully disobeys any direction or order of such Bench. However, the said power conferred on the Company Law Board under Regulation 47 would not take away the jurisdiction of the High Court to entertain a contempt petition in exercise of the powers u/s 10 of the Contempt of Courts Act, 1971 read with Article 227 of the Constitution of India. Section 12 of the Contempt of Courts Act prescribes the punishment with simple imprisonment for a term which may extend to six months or with fine

which may extend to two thousand rupees or with both. On the other hand, the Company Law Board is not conferred with a power under Regulation 47 prescribing a definite punishment for wilful disobedience of its direction or order. It must be noticed that even the High Court is vested with only a power to order limited sentence under the Contempt of Courts Act barring its wider power u/s 215 of the Constitution of India. The provisions of Regulation 47 cannot be read to confer Company Law Board with such wider power. The said provision with unguided power to impose punishment cannot be considered to be justifiable to question the jurisdiction of the High Court to entertain a contempt petition. Hence, the contention of the respondents regarding the preliminary issue as to the power of this Court to entertain a contempt petition is rejected.

15. This takes us to the other rival contentions on merits. The jurisdiction of the High Court to entertain a contempt petition and to punish the contemner has been well stated by the Apex Court and the High Court in various judgments. A Division Bench of this Court in *A. Ramalingam Vs. V.V. Mahalinga Nadar*, has observed thus:

Essentially, Contempt of Court is a matter which concerns the administration of justice, and the dignity and authority of judicial tribunals; a party can bring to the notice of Court, facts constituting what may appear to amount to contempt of Court, for such action as the Court deems it expedient to adopt. But, essentially, jurisdiction in contempt is not a right of a party, to be invoked for the redressal of his grievances; nor is it a mode by which the rights of a party, adjudicated upon by a tribunal, can be enforced against another party. The entire corpus of execution law exists for the enforcement of rights, by one party against another, which have been the subject matter of adjudication. In our view, there are sufficient grounds here to show that it will be expedient and undesirable to institute proceedings in contempt jurisdiction, in a situation of this kind. Firstly, the facts themselves may be in controversy, whether a deliberate flouting of a judicial order or decree has occurred and we state this, irrespective of the merits of the instant case. When they are in controversy, they cannot be ascertained without due enquiry. If the Court is to commence an action in contempt jurisdiction, only after ascertaining facts at such an enquiry, obviously it will be converting itself into an agency for arriving at findings of fact which may be a foundation for contempt jurisdiction. On the contrary, it would be in the interests of justice to exercise contempt jurisdiction, or to commence to do so, only when the facts of the record *ex facie* support such a proceeding; any detailed enquiry must be left to the Court which has passed the order, and which is presumably fully acquainted with the subject-matter of its own decree of temporary prohibitory injunction. For this reason, we are of the view that Order XXXIX Rule 2(3) of the Civil Procedure Code, is far more adequate and satisfactory remedy in such cases. Again, where the situation is strictly inter parties and third party rights are not involved, it is clearly more desirable that the Court which made the order of injunction, should go into the facts, and ascertain the truth of the alleged disobedience, and the extent to which it has been wilful.

.....Contempt jurisdiction should be reserved for what essentially brings the administration of justice into contempt or unduly weakens it, as distinguished from a wrong that might be inflicted on a private party, by infringing a decretal order of Court.

16. Coming to the facts of the present case, the petitioner initially approached the Company Law Board by filing a petition for oppression of its right and mismanagement of the first respondent company. They also prayed for stay of the resolutions of the Board of Directors of the company dated 2.5.2011 and sought for an order restraining the first respondent company from implementing the same. The Company Law Board did not stay that order. On the other hand, it proceeded to direct the first respondent to restore the supply of goods as per the terms detailed in letter dated 6.5.2011 at 50 per cent as against 15 per cent. At the time when the said order was passed, it was made clear that the said order was made without prejudice to the contentions on both sides. After the resolution of the Board of Directors of the first respondent company dated 2.5.2011, the foreign buyer had agreed to the following terms for resumption of supply in their e-mail dated 6.5.2011:

This is further to Mr.Venkatesh's (MD of JV company) email of May 2, 2011 and various discussions I had with you, including today. Given the fact that over 50% of RB's Global requirement of Durex etc. are sourced from the JV company, each day of suspension of supply would heavily impact its global business, brand equity and competitiveness of its products. I had voiced concerns about the merit of the decision to increase export price in the Board Meeting. Since you have maintained your position and given the situation, RB has instructed me to agree to following terms, provided supply is resumed immediately, today:

Transfer price - FAMC + 50%

Term Five years

Guaranteed volume - 800 million pieces per annum or 50% of global sales of Durex, whichever is lower.

While the necessary paper work for a formal agreement can be drawn up by the attorneys, we request the supplies should be resumed today, to avoid any further damage to RB's brands. Appreciate your confirmation that necessary advice has been given to the JV management, to act accordingly.

17. The condition for supply was on the basis of the enhanced profit of 50 per cent instead of 15 per cent and also for a guaranteed volume of purchase of 800 million pieces per annum or 50 per cent of global sales of Durex, whichever is lower and the total period agreed was five years. It is the specific stand of the respondents that they were prepared to resume the supply subject to the above conditions. Nevertheless, the foreign buyer had gone back on the above terms and withdrew its offer in their letter dated 13.5.2011, which resulted in the first respondent company in not complying with the directions contained in order

dated 20.5.2011.

18. That apart, by invoking Regulations 44 and 47 of the Company Law Board Regulations, the petitioner themselves approached the Company Law Board for a direction to initiate contempt proceedings under the above provisions against the first respondent company for wilful disobedience of the order dated 20.5.2011 and to pass appropriate orders for punishing the respondents. That application was considered by the Company Law Board on 27.5.2011 and adjourned the same to 1.6.2011 for filing of counter affidavit and also for hearing on the implementation of the order dated 20.5.2011. The application was again taken up by the Company Law Board on 1.6.2011. Of course, the Company Law Board having noticed its earlier order, only modified the earlier order dated 20.5.2011 by directing the first respondent company to resume the supply as per the terms undertaken in the affidavit filed by the petitioner and its affiliates on 1.6.2011. It must be noticed that the undertakings in paragraphs 2.1, 2.2 and 2.3 of the affidavit of the petitioner dated 1.6.2011 clearly modified the earlier terms and conditions agreed to by the foreign buyer vide their e-mail dated 6.5.2011 and subsequently withdrawn suo motu by their letter dated 13.5.2011. This affidavit of undertaking dated 1.6.2011 was taken on record by the Company Law Board and the order was passed on the same date. It does not appear as to whether the respondent company agreed to the above terms which are suo motu modified by the petitioner by filing an affidavit with the above undertakings, whereby as against the purchase of 800 million pieces of condoms or 50 per cent of their collective global requirement of Durex whichever is lower, the petitioner undertook to place orders for a total of 200 million pieces (condoms) or 50 per cent of their collective global requirement whichever is lower over the next three months i.e., upto August, 2011. The earlier condition relating to the period of five years was also not mentioned in that affidavit of undertaking. Even without ascertaining the response from the respondent company, except referring that a copy of the affidavit has been served on the respondents, which is also in dispute, the Company Law Board had passed the order dated 1.6.2011. There is nothing to indicate as to whether the said order was passed after hearing the respondents herein. That apart, the Company Law Board has also observed that "the respondent company made it clear that the mutual trust and confidence that was prevalent in the past decades between the parties have been completely destroyed and expressed their willingness to exit from the company on a fair price." With the above observation, the Company Law Board had only directed both sides to come with proposals in this regard. Having noticed the earlier order directing the respondents to resume supply and that too in terms of the acceptance of the conditions by the foreign buyer vide their e-mail dated 6.5.2011 and adjourned the matter for reporting compliance of the said direction, the Company Law Board modified the earlier order on the basis of the undertakings of the petitioner and its affiliates with a further direction to the parties to come with proposals on the offer of the respondent company to exit on a fair price. This only indicates that the Company Law Board did not incline to

exercise the power vested in it under Regulation 44 to punish the respondents.

19. Mr.A.L.Somayaji, learned senior counsel for the respondents 1 & 9 has also brought to our notice that subsequently by an order dated 7.7.2011, the Company Law Board, having noticed the earlier orders, only permitted the respondent-TTK group to exit from the company on a fair value to be arrived at on valuation and with that finding, the Company Law Board was inclined to appoint a valuer to value the shares of the company. The Company Law Board also directed that the TTK group can also opt to purchase the shares of the petitioner company. Placing reliance on the above, the learned senior counsel would submit that in view of the subsequent order, the petitioner cannot have any grievance to allege that the respondents had wilfully disobeyed the order dated 1.6.2011.

20. On the other hand, it is the contention of Dr.Singhvi, learned senior counsel for the petitioner that there is no question of merger of an interim order in view of the subsequent order. According to the learned senior counsel, the question as to whether the respondent company had wilfully disobeyed the order dated 1.6.2011 will be alone relevant and merely because subsequently the Company Law Board has directed the respondent company to exit from the company would not by itself dilute the earlier order dated 1.6.2011. He would also submit that the order dated 7.7.2011 is in relation to the resolution of the first respondent company dated 2.5.2011 and not in respect of the interim order dated 1.6.2011. Though we find force in the contention of Dr.Singhvi on the question of merger, as there cannot be a merger of one interim order with that of the subsequent order for the purpose of considering as to whether the earlier order has been violated or not, as the question of wilful disobedience should be considered with reference to the earlier order and in the event there has been a wilful disobedience of that order, still the Court can proceed with the contempt petition.

21. Though the order dated 1.6.2011 was passed in C.A.No.113 of 2011 and the order dated 7.7.2011 was passed in C.P.No.41 of 2011, nevertheless, the Company Law Board had referred extensively to the earlier order dated 1.6.2011 passed in C.A.No.113 of 2011 in its order. Hence, the observations made by the Company Law Board in the subsequent order can also be taken into consideration. As we have already pointed out, the earlier order dated 1.6.2011 was passed solely on the basis of an affidavit of undertaking filed by the petitioner and that too, the order came to be passed on the same date when the affidavit was filed and these facts were noticed by the Company Law Board in the subsequent proceedings dated 7.7.2011 extensively. Having noticed and having posted the matter for reporting compliance of the earlier order, the Company Law Board did not proceed further and has only directed both parties to submit the proposals on the offer of the TTK group to exit from the company on a fair value to be arrived at after valuation of shares and for that reason had appointed a valuer.

22. Whether the direction dated 20.5.2011 to the respondent company to

resume the supply could be on the basis of the acceptance of certain conditions by the petitioner company through their e-mail dated 6.5.2011 or whether such undertaking had been rightly withdrawn by the petitioner company on 13.5.2011 or whether the undertaking of the petitioner through an affidavit dated 1.6.2011 could be acted upon without a fair hearing of the respondents and an order could be passed on that basis on the same date, are all matters to be adjudicated upon in detail.

23. The contempt jurisdiction is essentially to keep administration of justice pure and undefiled. A clear contumacious conduct, which is not otherwise explainable, alone merits action for contempt and the consequent punishment. The power to punish should be exercised carefully and cautiously. In the event where prima facie two views are possible and capable of different and reasonable interpretation and unless it is not only firmly held that the contemner is bound by the direction issued in the order and also it defied the said direction wilfully and deliberately, the Court cannot hold that a contempt is made out. When two views are possible as to the purport of the order while considering the different stand taken by either party, the rule of wilful disobedience shall not be applied, as the essential ingredient for civil contempt is "wilful disobedience" and not any or every disobedience which could be explained by acceptable reasons. In this context, we may also place reliance on the judgment of the Supreme Court in *The State of Bihar Vs. Rani Sonabati Kumari*, holding that "if the order was ambiguous and equivocal and reasonably capable of two interpretations, a party who acted on the basis of one of such interpretations could not be held to have wilfully disobeyed the order". Further, one more element would be that such wilful disobedience should be proved by supportive materials. The term "wilful" would ordinarily connote wilful and deliberate disregard to the order of the Court. Whether there has been any wilful disobedience or not depends upon the facts of each case. The power of the contempt of Court cannot be exercised in the event the alleged contempt requires an enquiry to determine as to whether there has been any wilful disobedience or not and in the said circumstance, the Court must refrain from doing so and consequently should not entertain a contempt petition.

24. Recently the Supreme Court in *Dinesh Kumar Gupta Vs. United India Insurance Co. Ltd. and Others*, while considering a similar situation, has held as follows:

17. This now leads us to the next question and a more relevant one, as to whether a proceeding for contempt initiated against the appellant can be held to be sustainable merely on speculation, assumption and inference drawn from facts and circumstances of the instant case. In our considered opinion, the answer clearly has to be in the negative in view of the well-settled legal position reflected in a catena of decisions of this Court that contempt of a civil nature can be held to have been made out only if there has been a wilful disobedience of the order and even though there may be disobedience, yet if the same does not reflect that it has been a conscious and wilful disobedience, a case for contempt

cannot be held to have been made out. In fact, if an order is capable of more than one interpretation giving rise to variety of consequences, non-compliance with the same cannot be held to be wilful disobedience of the order so as to make out a case of contempt entailing the serious consequence including imposition of punishment. However, when the courts are confronted with a question as to whether a given situation could be treated to be a case of wilful disobedience, or a case of a lame excuse, in order to subvert its compliance, howsoever articulate it may be, will obviously depend on the facts and circumstances of a particular case; but while deciding so, it would not be legally correct to be too speculative based on assumption as the Contempt of Courts Act, 1971 clearly postulates and emphasises that the ingredient of wilful disobedience must be there before anyone can be hauled up for the charge of contempt of a civil nature.

25. Considering the above facts, we cannot come to a definite conclusion as to whether the respondents have wilfully disobeyed the Court order and that too, there has been a wilful disobedience. There is one more aspect to be considered in this regard. It is the specific case of the respondents that the petitioner is a third party and he is canvassing the petition on behalf of one SSL, namely, the purchaser of the contraceptives. It is their specific case of the respondents that they are given to understand that one SSL, the purchaser of contraceptives, had filed a claim before the Courts of English for a mandatory injunction and the Chancery Court and the Court of appeal dismissed their claim. As the ultimate purchaser who sought the supply had failed to obtain any order from the Courts in England, the petitioner who is not the purchaser or in no way connected with the supply of contraceptives, seeks to obtain an order for supply of the contraceptives by using the contempt jurisdiction. Dr.Singhvi, learned senior counsel for the petitioner, while refuting the said contention, would submit that the foreign buyer is the parent of the petitioner and the order of the Company Law Board came to be passed only in the application for disobedience filed by the petitioner. Hence, he would submit that the argument that the petitioner is a third party to the proceeding and is indirectly trying to get the supply by filing a contempt petition is totally untenable. While considering the above rival contentions, again this Court is only called upon to determine the factual controversy in a contempt petition, which is impermissible. This Court is only entitled to consider as to whether the order complained has been wilfully disobeyed or not and this Court would not be competent to go into the legality or otherwise of the order nor can it travel beyond the order complained. On the above facts, we are not inclined to exercise the contempt jurisdiction to hold that the respondents are guilty of contempt and, accordingly, we dismiss the contempt petition as devoid of merits. Consequently, Sub Application Nos.478 and 573 of 2011 are also dismissed.